



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

**TO ALL : ACCOUNTING OFFICERS OF DEPARTMENTS AND
CONSTITUTIONAL INSTITUTIONS
: ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES
LISTED IN SCHEDULES 3A AND 3C TO THE PFMA
: HEAD OFFICIALS OF PROVINCIAL TREASURIES**

NATIONAL TREASURY PRACTICE NOTE

SUPPLY CHAIN MANAGEMENT:

**1 PROHIBITION OF RESTRICTIVE PRACTICES: CERTIFICATE OF
INDEPENDENT BID DETERMINATION: STANDARD BIDDING DOCUMENT
(SBD 9)**

2 AUGMENTATION OF GENERAL CONDITIONS OF CONTRACT

1 PURPOSE

1.1 This practice note is intended to ensure that when bids¹ are considered by accounting officers of departments and constitutional institutions and accounting authorities of public entities listed in schedule 3A and 3C to the Public Finance Management Act (PFMA), 1999, all reasonable steps are taken to deter any form of bid rigging (or collusive bidding)².

2 BACKGROUND

2.1 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

- 2.2 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
- a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and / or committed fraud or any other improper conduct in relation to such system; and
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 2.3 It has, however, come to light that in the supply chain management environment bid rigging (collusive bidding) is increasing rapidly at the expense of great cost and efficiency to government. Given that bid rigging is essentially a form of bid fraud, it follows that where bid fraud exists, the likelihood of uncovering bid rigging also increases.
- 2.4 To this end, the National Treasury in consultation with the Competition Commission South Africa intends providing accounting officers and accounting authorities with preventative measures to counter bid rigging. These measures are also intended to inform bidders about the illegality of bid rigging, the penalties applicable to enterprises found to have engaged in such practices and the possible investigations and imposition of administrative penalties by the Competition Commission South Africa as contemplated in the Competition Act No 89 of 1998.

3 **MEASURES TO ADDRESS RESTRICTIVE PRACTICES**

The following measures are introduced to combat any form of bid rigging (or collusive bidding):

3.1 **Certificate of Independent Bid Determination**

- 3.1.1 With effect from the date on which this practice note takes effect, accounting officers and accounting authorities are required to utilize the attached Standard Bidding Document (SBD 9) "*Certificate of Independent Bid Determination*" when inviting price quotations, advertised competitive bids, limited bids or proposals. The SBD 9 form should be used with minimum changes that are necessary to address contract and project specific issues.

3.1.2 Bidders should be required to complete, sign and submit the Certificate together with the bid documentation at the closing date and time of the bid. If a bidder has failed to submit the SBD 9 together with the bid documentation, the bidder must be requested, in writing, to submit the signed form within seven (7) working days of notification. Failure to submit the signed form within seven (7) working days of notification may result in the invalidation of the bid.

3.1.3 Accounting officers and accounting authorities are required to utilize the information contained in the certificate to ensure that when bids are considered all reasonable steps are taken to prevent any form of bid rigging.

3.1.4 If an accounting officer or accounting authority decides to refer a bidder or contractor who, based on reasonable grounds or evidence obtained by the accounting officer or accounting authority, has engaged in the restrictive practice referred to in paragraph 2.1, to the Competition Commission for investigation and possible imposition of administrative penalties, such written request, together with all supporting documentation, must be sent to the Manager Enforcement and Exemptions at:

Competition Commission South Africa
Private Bag X 23
Lynnwood Ridge
0040

or 77 Meintjies Street
Sunnyside
Pretoria
0001

The Manager Enforcement and Exemptions may be contacted on telephone (012) 394 3200, facsimile (012) 394 0166 or e-mail at ccsa@compcom.co.za.

3.2 **Augmentation of General Conditions of Contract**

3.2.1 The General Conditions of Contract have been augmented to provide for the prohibition of restrictive practices with the inclusion of paragraph 34 as follows:

34 PROHIBITION OF RESTRICTIVE PRACTICES

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it

is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding.

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

3.2.2 Accounting officers and accounting authorities are required to ensure that all bids are in future invited in terms of the revised General Conditions of Contract.

4 **APPLICABILITY**

This practice note applies to all national and provincial departments, constitutional institutions and Schedule 3A and 3C public entities.

5 **DISSEMINATION OF INFORMATION CONTAINED IN THIS PRACTICE NOTE**

5.1 Heads of provincial treasuries are requested to bring the contents of this practice note to the attention of accounting officers of their respective provincial departments.

5.2 Accounting officers of national and provincial departments are requested to bring the contents of this practice note to the attention of accounting authorities of schedule 3A and 3C public entities reporting to their respective executive authorities.

6 **EFFECTIVE DATE**

This practice note is issued in terms of section 76(4)(c) of the PFMA, and takes effect from the date of issuance.

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CONTACT PERSON

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A handwritten signature in black ink, appearing to read 'S F Nomvalo', written in a cursive style.

S F NOMVALO
ACCOUNTANT-GENERAL
DATE: 21 July 2010

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